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3 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
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7 PROCEEDINGS AT DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
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9 IN RE: PUBLIC HEARING FOR PROPOSED RULES AND REGULATIONS FOR  
10 THE DREDGING AND MANAGEMENT OF DREDGED MATERIAL  
11

12 DATE: AUGUST 6, 2002

13 TIME: 4:00 P.M.

14 PLACE: RIDEM

15 235 PROMENADE STREET

16 ROOM 300

17 PROVIDENCE, RI  
18

19 PRESENT:  
20

21 TERRENCE D. GRAY, P.E, ASST. DIRECTOR AIR, WASTE & COMPLIANCE

22 TIMOTHY W. PAVILONIS, ESQ. LEGAL COUNSEL

23 TRACI LIMA  
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1 (Hearing began at 4:04 PM)

2 MR. GRAY (Introduction): I think we're going to get started. Good afternoon.  
3 Welcome to DEM this afternoon. Today is August 6, 2002, my name is Terrence  
4 Gray and I'm the assistant director for Air, Waste and Compliance for DEM. With  
5 me today is Tim Pavilonis, he is an attorney with DEM's Office of Legal Services.  
6 Alicia Good, the Assistant Director for Water Resources, Ron Gagnon who is the  
7 Chief of the Office of Technical and Customer Assistance, and Russ  
8 Chateauneuf, who is a Chief within the Office of Water Resources.

9  
10 We're here today regarding the public hearing concerning the proposed rules and  
11 regulations for dredging and the management of the dredge material. Those  
12 regulations are dated July 2002. Many of us have been involved in the  
13 development of these regulations. It's been a collaborative process that's been  
14 going on for almost a year now.

15  
16 This hearing is being conducted under the authority of Chapter 42-17.1 pursuant  
17 to the procedural requirements of Chapter 42-35, which is the Administrative  
18 Procedures Act of the General Laws of Rhode Island of 1956, as amended. In  
19 accordance with these requirements a public notice of this hearing was published  
20 in the Providence Journal on July 18, 2002 with a copy of the notarized affidavit  
21 of such publication attached to the record of this proceeding as Exhibit 1.

22  
23 First through the requirements of Section 42-35-3 of the Rhode Island General  
24 Law, DEM has made the following determinations: We've considered alternative  
25 approaches to the proposed regulations and we've determined that there is no  
26 alternative approach among the alternatives considered which would be as  
27 effective and less burdensome. DEM has also determined that the proposed  
28 regulations do not overlap or duplicate with any other state regulations. In fact,  
29 they've been designed to eliminate duplication and overlap amongst several  
30 programs within DEM. DEM has determined that the regulations will not result in  
31 a significant adverse economic impact on small business or any city or town.

32  
33 The purpose of this hearing is to afford interested parties an opportunity to  
34 submit data, views or arguments orally and/or in writing on the proposed rules  
35 and regulations. The hearing is not intended as a means of providing a forum for  
36 discussing, debating, arguing or otherwise having any dialogue at this time with  
37 members of any of the sections of the department represented today. We're  
38 taking peoples' formal positions into the record at this time. Following the close of  
39 the formal public hearing, time permitting there will be an opportunity for short  
40 informal question-and-answer period if people wish that opportunity.

41  
42 The procedure we'll use for persons who wish to speak is as follows: I hope  
43 everybody registered with Traci Lima at the back of the room. If you haven't,  
44 please register. Speakers will be called in the order of registration. When your  
45 name is called, just identify yourself by name and affiliation, please try to speak  
46 clearly so the stenographer can capture your comments accurately, make your

1 presentation, and if a written copy of your presentation is available please  
2 provide that to us as part of the record.

3  
4 The submission of any written data, views, arguments or commentary on the  
5 proposed rules will be accepted until September 5, 2002. After the time has  
6 elapsed for the submission of written commentary, the Department has four  
7 options: File the rules and regulations with the Secretary of State as is; file the  
8 rules and regulations with minor changes; we may not file these amendments  
9 and continue with the existing rules and regulations, which are the authorities  
10 spread throughout various regulations in DEM; or we may make additional  
11 amendments to the rules and regulations and hold a new public hearing. If filed,  
12 these rules and regulations become effective 20 days after filing and have the  
13 effect of law.

14  
15 I will now, Traci, if you could at this time give me the list of speakers, I'll start  
16 calling folks to put their comments on the record. The first person signed up to  
17 speak is Mr. Ken Kubic from the Rhode Island Marine Trade Association. Mr.  
18 Kubic?

19  
20  
21 MR. KUBIC: My name is Ken Kubic, president of the Rhode Island Marine Trade  
22 Association. I also am a member of the Eastbay Economic Initiative and am in a  
23 company called Kubic & Conradi and we work with marinas and other facilities to  
24 make the regulatory requirements of the State of Rhode Island. I would first like  
25 to thank Terry Gray and the other members of DEM that are present here, Alicia  
26 Good, Ron Gagnon, who work with us and the director, and also members of  
27 CRMC, Sandra Whitehouse, and Ken Paine from the Senate and Peter Ginaitt  
28 from the House of Representatives in putting and working very diligently to come  
29 up with a way that maybe dredged material can be disposed of in the State of  
30 Rhode Island without sending it to the central landfill.

31  
32 The objective of the work we've done as a committee was to comply with two  
33 pieces of legislation that we worked hard on in order to pass with the state  
34 legislature and that was the Marine Infrastructure Maintenance Act of 1996 and  
35 the Boating Facilities Act of 2001. Both these pieces of state legislation were  
36 geared to have dredging happen and have disposal sites outlined in the state  
37 and make it a reasonable, environmentally and economically feasible way to  
38 dredge disposal at marinas and waterways in the State of Rhode Island to be  
39 dredged. It's been 30 years since there has been an authorized dredge program  
40 in the State of Rhode Island. My comments are going to be short because I'm  
41 going to leave it to my two counterparts in the trade association, Eastbay  
42 Economic Initiative, Michael Keyworth and Jonathan Rodrick.

43  
44 Two of the things that I kind of picked up quickly that maybe they won't cover is  
45 that the timing that happens with CRMC is critical for marinas to dredge. We only  
46 have a small window of opportunity. Our season is short and the dredge window

1 assigned to most of the state is short, so the timing that we have to go through  
2 with CRMC to get our application approved is very quickly. Secondly, in the two  
3 acts we have passed, in '96 especially, the regulations that govern dredged  
4 material should be no stricter than that of the federal guidelines for the federal  
5 regulatory process as outlined by the Army Corps of Engineers or EPA. That was  
6 clearly set up in the legislation of 1996. My last comment is that one of the  
7 toughest things that we've had to overcome is the differences in the levels of  
8 testing with regard to, say, arsenic for example. When states on either side of us,  
9 levels are 10 and 20 and EPA has fluctuating levels based on background in  
10 Rhode Island. We have a residential level of 1.7 that leads up to an industrial  
11 level of 3.827. So with that, hopefully, the comments that go in will be addressed  
12 and we hope the process will be made easier, dredging and dredge disposal  
13 sites will actually happen in the State of Rhode Island based on the laws passed  
14 in 1996 and 2001. Thank you, Mr. Chairman, and thanks for your help.

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16  
17 MR. GRAY: Thank you, Mr. Kubic. Second speaker is Mr. Don Conradi from  
18 Kubic & Conradi.

19  
20  
21 MR. CONRADI: I would like to thank the same people Ken thanked. I know we all  
22 worked very hard on getting legislation through to get over the road block of  
23 dredge material being considered something that was so onerous that you never  
24 could touch it, you never could look at it, and you never moved it. I think all of us  
25 have learned an awful lot about what dredge material really is. Just because it's  
26 under the water it ended up developing some kind of mystery for itself that it had  
27 to be bad. I think the regulations are a great step forward in being able to handle  
28 dredge material in the State of Rhode Island. But the major obstacle that I see is  
29 that the limits for materials such as arsenic are so low that it in effect makes it  
30 impossible to practically deal with dredge material. It's unrealistic to think that  
31 anybody that has a piece of residential property will be willing to put a land use  
32 restriction on their property to accept material as fill. They could truck material  
33 from the State of Connecticut into Rhode Island, it doesn't get tested, it could  
34 have an arsenic level that's four times higher than the dredge material, but never  
35 have any land use restriction on it. Yet we take material out of the water in Rhode  
36 Island that needs to be put someplace and say, well you got to put a land use  
37 restriction on it because it's above this 1.7 level.

38  
39 I feel DEM needs to go back and revisit the levels that are established for metal  
40 contaminants and redo the study and come up with realistic levels that work, and  
41 come up with a system of defining levels that let you handle material in a  
42 sensible way. If the background level in an area is 5, it makes no sense to not  
43 take any kind of material that is below 5 and be able to dispose of it in that area. I  
44 think I probably said enough about that.

1 In one of the studies that was done for DEM in establishing this level, a comment  
2 on the summary page by the author of the study is this, "This lower average  
3 could be due to either lower background concentrations in Rhode Island soil, or  
4 the result of stricter study guidelines." It's my feeling that the study guidelines  
5 were too stringent and the sample area was not broad enough to represent a true  
6 reflection of what the background levels are in the State of Rhode Island.

7  
8 The other area that I think needs to be looked at is the dredge window open in  
9 the state currently. Statewide it's a two month window and I think there needs to  
10 be some thought given to the possibility of opening windows in other times during  
11 the year on a site-specific basis.

12  
13 I think there are a few other comments I would like to make, but I will submit  
14 them later with the written comments.

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17 MR. GRAY: Thank you, Mr. Conradi. The next person to speak is Mr. Dan Goulet  
18 from the Coastal Resources Management Council.

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21 MR. GOULET: The CRMC will be submitting comments to you in writing. I'll let  
22 other people speak at this time.

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24  
25 MR. GRAY: Thanks, Dan. The next speaker is Mr. John Torgan from Save The  
26 Bay.

27  
28  
29 MR. TORGAN: Thank you, Terry. I would like to thank Terry Gray and Alicia and  
30 Russ, and all of the team that's represented. I think these draft regulations  
31 represent tremendous progress and I think DEM staff has done a really great job  
32 in dealing with some of these difficult technical issues. As Don pointed out, the  
33 intent of the legislation that had us all direct you to write these regulations was to  
34 look for alternatives to the ones we have on the table before this process,  
35 primarily alternatives to in-water disposal. And that means making beneficial use  
36 and upland disposal feasible, affordable for marinas without sacrificing  
37 environmental protection and I think we've come a long way to that.

38  
39 I guess the obvious issue has come up in previous testimony, as well as the  
40 need for to address the problem with the arsenic standard, possibly some other  
41 standards in our regulations and ways to make feasible dredge material,  
42 beneficial use and transportation, storage. We have as a group discussed this  
43 issue in the past and listed a number of ways to deal with those issues. There  
44 have been issues raised about the scientific basis for our existing state arsenic  
45 standard, is it health based or risk based. Have we looked at how it would  
46 actually impact or help the environment. We have also discussed the notion of

1 blending sediments, for example, by diluting sediments that don't meet standards  
2 with cleaner sediments. Although it's an attractive solution, it's also probably a  
3 more expensive solution, regulatorily difficult solution for marinas.

4  
5 And then this other notion that we've discussed, and I don't know if we can  
6 address the entire arsenic issue through dredge regulations, or if it can be  
7 separated out to simply address the contaminants of dredging material solely  
8 without dealing with all of the solid waste in the state. But, clearly we need to  
9 address the issue of arsenic standards. We want to enable operations like any  
10 beneficial use transfer facility to be viable in the state. We need to move strongly  
11 in that direction and there may be an opportunity to adopt other states' standards  
12 or federal standards in lieu of our existing standard if it's deemed that those are  
13 adequately protected and that those make more sense for proponents and for the  
14 business community. We would support further examination and progress on that  
15 point. We look forward to working with you all, stakeholders and the agencies, to  
16 continue progress on this, and a great job on it to date and we want to finish up  
17 and make it work so we can get priority dredging projects underway.

18  
19  
20 MR. GRAY: Thank you, Mr. Torgan. The next person is Mr. Briscoe Lang from  
21 Pare Engineering.

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23  
24 MR. LANG: I have no comments.

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27 MR. GRAY: The next speaker is Mr. Michael Keyworth.

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30 MR. KEYWORTH: Terry, thank you. Again, I think there are so many  
31 appreciations that are deserved here. But I would like to first of all, the comment  
32 from the trade side of things will come in a comprehensive written format. I would  
33 like for this verbal presentation by us to be seen as sort of the icing before the  
34 cake is made. In general, to frame the way in which this process happened, and  
35 to quiet the skeptics, if there are any here, is that in the past 15 years working on  
36 environmental issues as they meet the industry head-on, it's the only issue and  
37 probably the toughest one, however, but the only issue in which there has been  
38 complete consensus. That yes, there doesn't seem to be a complete solution for  
39 dredging and dredge material placement in water. And as a result -- or a  
40 politically viable solution, so as a result, we have to come up with some other  
41 solutions. I would like to applaud Save The Bay. The Fishermen's Association  
42 has basically remained quiet throughout this, I don't know they're in support,  
43 maybe they are, whenever they're not supportive they're not quiet. The agencies  
44 themselves, who I know have conflicts within them, but I think for the most part  
45 they put aside their conflicts to try to work toward a palatable solution. And then  
46 us on the trade side for sort of giving our cheers and trying to referee when we

1 possibly could. In general, some of our comments are that these regulations, I  
2 believe do what most of the standards in Rhode Island do, which is to go beyond  
3 what every other state does. It really is a little bit more onerous, a little more  
4 burdensome, a little tighter controls. You can look at drinking water standards or  
5 swimming standards, our standards are always higher. The lead standard, the  
6 way in which lead is analyzed. All the standards are always stricter in Rhode  
7 Island. It's one of those things that's unique and sometimes difficult in Rhode  
8 Island. I think we have to in the spirit of things try to moderate that a bit and try to  
9 come to some middle ground where it will in fact -- we don't want to go this far  
10 and not have dredging occur because I think everyone agrees dredging has to  
11 take place.

12  
13 I also would support as would we, the use of this material in the remediation of  
14 brownfields. Support further funding of study in science into the compounds and  
15 the base levels that make up our ecosystem and I think everybody agrees that  
16 that has to happen and that there be an open mind as we go forward, even after  
17 these regulations are promulgated to revising these standards as we progress.

18  
19 In terms of problems, I think people have gotten into them, we'll get into them in  
20 detail and try to identify section by section what we see as the issues and then  
21 try to pull the things together.

22  
23 I also in general would like to comment on something that nobody else has  
24 commented on and, except for Ken, which is, there are federal standards for in-  
25 water disposal. The Army Corps worked hard on that for many years, in '96  
26 reinforced by the 2001 regulation, we've agreed to live with those standards. I  
27 think we have to, within this document, we have to address that. I know it wasn't  
28 the intent of the document to address in-water disposal but it has to in some way.  
29 Thanks a lot for the comments. Our formal comments will be in by September 5.

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32 MR. GRAY: Thank you, Mr. Keyworth. Next people are Mr. Rick Burroughs and  
33 Chris Santana from URI.

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36 MR. BURROUGHS: We have no comments for the record at this time.

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38  
39 MR. GRAY: Thank you. Next person who signed up is Sandra Whitehouse.

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42 MS. WHITEHOUSE: I am here today representing the House Policy Office and  
43 not CRMC. The House Policy Office and Representative Ginaitt who is a sponsor  
44 of the 2001 regulations will also be submitting written comments. Just to mention  
45 today we certainly would encourage further analysis or data collection to really  
46 better understand what the background levels of disposal should be. I think there



1 is a lot hanging on those numbers and we'll make sure we really have a good  
2 scientific basis for whatever that standard becomes.

3  
4 To add to what Mike Keyworth said, some of you know we had a bill in last year  
5 to try to promote the use of dredge material with brownfield sites, and that will still  
6 hopefully be reactivated this coming year. We're continuing to do a lot of work  
7 with DEM and EDC on brownfield sites and trying to get more, really help create  
8 a demand for dredge material used on those sites for remediation and we will be  
9 submitting written comments.

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11  
12 MR. GRAY: The next speaker is Mr. John Paul representing himself.

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15 MR. PAUL: My name is John Paul and I am a member of the community based  
16 group Narragansett Bay Watch. Today I am speaking for myself. Myself and the  
17 group will be submitting written comments. We want to thank DEM and the  
18 stakeholders for proposing these rules. We're still reviewing the proposed rules  
19 but we do feel -- I feel that the language in section 5.3 prohibiting in-water  
20 disposal really is not strong enough. It also does not distinguish between  
21 unconfined, confined disposal or in-bay or open ocean, open-water disposal. All  
22 in-bay open-water disposal should be prohibited without exception.

23  
24 That's all the comment for today.

25  
26  
27 MR. GRAY: Thank you, Mr. Paul. The next speaker is Ms. Michelle Komar, also  
28 from Narragansett Bay Watch.

29  
30  
31 MS. KOMAR: I, like John Paul, will be meeting with our group and submitting  
32 written comments later. I have one comment/question to ask of the panel here  
33 today. Part of our comment will be submitted with amendments for solid waste  
34 regulations to establish a clearinghouse that would be a keeper of all potential  
35 beneficial land use projects and they could coordinate with DOT projects,  
36 municipal and private beach projects. Have a list available to therefore  
37 encourage operators of marinas or municipal or federal agencies doing dredging  
38 projects to make use of these sites. And why it is important to have a  
39 clearinghouse is to coordinate, not only the availability, but the time that this  
40 material can be accepted. We need a central place that people can go and call,  
41 part of the preapplication process should have a running list of potential sites,  
42 projects in the state, or even neighboring states that material can be accepted.  
43 Thank you.

1 MR. GRAY (Conclusion): Is there anybody else who wishes to comment on the  
2 record at this time? (no response) Since there are no other comments at this  
3 time, since all interested parties have been heard we'll now enumerate all the  
4 exhibits and receive comment for the public record.

5  
6 Exhibit 1 is the Affidavit of Publication of the public notice of this hearing in the  
7 July 18 edition of the Providence Journal. That's the only exhibit at this time.

8  
9 As I mentioned earlier, the period for written comments is open until September  
10 5, 2002. On behalf of DEM I would like to thank you for attending and for putting  
11 all your comments in the record this afternoon. Since there are no further  
12 statements to be presented at this time, and since all interested parties present  
13 have been heard, I declare this public hearing closed.

14 (HEARING CLOSED AT 4:31 P.M.)